THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.21234 OF 1998

DATED: 19-09-2007

Between:

K. Govinda Rao

.. Petitioner

and

The District Collector (Cooperation),
Srikakulam District and others.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.21234 OF 1998

ORDER:

This writ petition is filed seeking a mandamus declaring the order, dated 08.06.1995, in Rc.No.7185/88C, passed by the 1st respondent, as arbitrary, illegal and contrary to the provisions of the A.P. Cooperative Societies Act, 1964.

It appears, under the impugned proceedings, dated 08.06.1995, the 1st respondent- Collector (Cooperation), Srikakulam, authorized the 3rd respondent – Divisional Cooperative Officer, Srikakulam to launch criminal prosecution against the petitioner, in view of the enquiry report submitted by the Enquiry Officer of Veeraghattam Primary Agricultural Cooperative Credit Society, under Section 51 of the A.P. Cooperative Societies Act (for short 'the Act'), stating that funds of the Society have been misappropriated by the petitioner.

On 29.07.1998, this Court granted interim stay of initiating prosecution. Now, it is more than nine years since the said interim order was passed.

Be that as it may, it appears, the report of the Enquiry Officer was under Section 51 of the Act. It is settled law that unless and until the enquiry attains finality by way of surcharge proceedings under Section 60 of the Act, the authorities cannot initiate criminal prosecution against an employee. Therefore, I am of the opinion that passing of the impugned order is arbitrary, illegal and contrary to the provisions of the Act and, therefore, the same is liable to be set aside.

Accordingly, the impugned order, dated 08.06.1995, passed by

the 1st respondent, is set aside. However, this will not preclude the authorities from launching criminal prosecution against the petitioner, if, in the meanwhile, surcharge proceedings under Section 60 of the Act are concluded against him.

However, it is stated by the learned Assistant Government Pleader that the petitioner is no more.

In view of above, the writ petition is closed. No order as to costs.

C.V. RAMULU, J

19th September, 2007.
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